



TOWN OF LEXINGTON **PLANNING & BUILDING OFFICES**

1625 Massachusetts Avenue
Lexington, Massachusetts 02420
781-698-4560

planning@lexingtonma.gov
www.lexingtonma.gov/planning

Date: February 11, 2022
To: Planning Board
From: Planning and Building Offices
Cc: Cindy Arens
Re: Public Hearing for Article 40 - Citizen Petition

The following are comments compiled by Lexington Land Use, Health and Development Staff:

Town Counsel Review

Town Counsel reviews all zoning to be sure that the zoning amendment process has been followed per state law and that the proposed zoning is within scope of the submitted warrant language. Town Counsel does comment and make suggestions to reduce ambiguities and to reduce litigation risk. Town Counsel does not opine on Town policy that the proposed petition implements nor on the legality of the bylaw as that is reviewed by the Attorney General's Office and then ultimately by the Courts.

Building Code Concerns

MGL 40A Section 3 states "No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code," "No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building..."

6.13.3 (1) of the proposed by law appears to regulate appliances internal to the building. This may not be allowable under state law. For houses of a certain GFA the bylaw prohibits indoor fossil fuel and lighting. There is strong concern amongst staff that this proposed by law does conflict with zoning.

How is indoor or outdoor lighting be related to fossil fuel?

The Lexington bylaw HERS rating excludes solar applications. The Building Code HERS rating does include 5 points for solar pv systems installed. This creates a one-off that the building community is not used to. This seems to be in direct conflict with the building code. This potential confusion is one of the reasons why there is a uniform building code. HERS scoring method should follow the building code method.

HERS Rating

A HERS rating of 47 in Tier one and 42 in Tier two is difficult to achieve. Typically, the larger the house the easier it is to achieve a low HERS score. The building community is not prepared to achieve that score as HERS score of 42 or 47. It is suggested that the building code HERS rating of 55 be used.

A HERS rating estimate is submitted with the building permit application. At the time of Certificate of Occupancy, a HERS rating is certified. If the project is certified above the allowable rating, what

is the recourse? Under the proposed zoning, the developer or homeowner will need to apply for a special permit through the ZBA. The ZBA is not obliged to grant a special permit for extra GFA.

A low HERS rating is difficult to achieve. There is often not a fix once the building is built; especially the lower the HERS rating the more difficult to achieve each point. The developer will be on their own to conduct interim HERS reviews to be sure the 47 or 42 HERS score is achieved. Interim HERS ratings are not currently not part of the inspection process.

Solar Ready / Solar Installation

Section 6.13.3 (2) requires that that Tier 1 houses “Provide an effective solar ready area, free from obstructions, necessary to install a 1.4 watt DC per square foot of gross floor area or greater solar energy system...” Given the proximity to adjacent buildings, landforms and trees this may not be achievable. An exemption for obstructions is provided in Tier 2 but to get to Tier 2 the provisions of Tier 1 must be achieved. An exemption should be provided in Tier 1.

Given the importance of trees and the size of some lots, it is not clear that with the Tier 2 exemption is viable on all lots. A variance from the ZBA would be needed. The bar set for a variance by state law is difficult to overcome.

Does "free from obstructions" - include chimneys, vents, skylights, etc.?

What happens if orienting the roof for adequate solar pushes the house into the setback, or wetlands? These are not obstructions which prevent sunlight from reaching the roof but are other binding constraints.

"Provide an effective solar ready area" - is this just "enough" roof based on the size/design? Or does the roof need to be oriented for solar? Clarification is necessary to confirm whether the house must be oriented to achieve the solar ready zone and the 1.4 watt per GFA, or its required only if the house design and plans submitted can accommodate it.

Houses oriented for maximum solar gain rather than oriented towards the street could change the commonly accepted streetscape aesthetic.

Non-conformities

The added provision in Section 4.2: “2) buildings lawfully in existence or lawfully begun, or to structures subject to a special permit applied for by December 31, 2022, which shall instead be subject to the gross floor area requirements set forth in Table 4.4.2.2 Existing Buildings,” may have some unintended consequences.

The December 31, 2022 effective date needs clarification and should also include building permits. It should be clear whether the cut-off is “applied for and deemed complete” or issued. The following suggested language may work...“lots containing dwellings lawfully in existence but not proposed to be substantially/fully demolished, lawfully begun, or subject to a building permit or special permit applied for by December 31, 2022”

In order to prevent partial tear-downs, or developments that leave only the foundation and want to claim the exemption for pre-existing buildings to maintain the existing buildings GFA allowance; a definition of substantial demolition and/or new construction should be included to provide better guidance to as to when the new GFA is triggered.

Fiscal Impact

A financial impact study should be done. Will this proposal cut revenues for permit fees, assessed values, tax receipts, property values etc? When changes were made to the allowed GFA in 2016 an analysis helped people understand the impact. Many residents are counting on their real-estate asset for their retirement, what would be the expected impact to property values.

While the Public hearing provides notice to the public it does not allow time to fully analyze, understand the unintended consequences and fix them. Town meeting is not the forum to craft zoning bylaws, Town meeting does not represent all the stakeholder pertaining to zoning.